



# City of Carmel

## **Carmel Advisory Board of Zoning Appeals Regular Meeting Monday, August 23, 2004**

The regularly scheduled meeting of the Carmel Board of Zoning Appeals met at 7:00 PM on Monday, August 23, 2004 in the Council Chambers of City Hall, Carmel, Indiana. The meeting opened with the Pledge of Allegiance.

Members in attendance were Leo Dierckman, James Hawkins, Earlene Plavchak, Madeleine Torres and Charles Weinkauff, thereby establishing a quorum. Angie Butler, Jon Dobosiewicz, and Mike Hollibaugh represented the Department of Community Services. John Molitor, Legal Counsel, was also present.

Mrs. Plavchak moved to approve the minutes as submitted from the July 26, 2004 meeting. The motion was seconded by Mr. Dierckman and **APPROVED 5-0.**

Ms. Butler gave the Department Report. The Department requests that the Board make a motion to table **Item 14h Docket No. 04070020 A, Martin Marietta, Appeal to Director's Determination of** to the September 27, 2004, 5:00 PM Board of Zoning Appeals meeting.

Mr. Dierckman moved to table **Item 14h Docket No. 04070020 A, Martin Marietta, Appeal to Director's Determination of.** The motion was seconded by Mr. Hawkins and **APPROVED 5-0.**

Mr. Molitor gave the Legal Report. He reminded the Board of the Executive Session immediately following this meeting to discuss status of pending litigation. Since one of the litigations involves the Rules of Procedure, he suggested that the Board table the public discussion of **Item 1g Proposed amendment to Article IX (BZA Rules of Procedure) and Section 30.08: Alternate Procedure (Hearing Officer), Chapter 21: Special Uses, and Articles V & VI (BZA Rules of Procedure)** until next month's meeting.

Mr. Dierckman moved to table **Item 1g Proposed amendment to Article IX.** The motion was seconded by Mrs. Torres and **APPROVED 5-0.**

### **H. Public Hearing.**

#### **1-2h. Carmel Lutheran Missouri Synod Church – Expansion**

The applicant seeks special use amendment and development standards variance approval for a church expansion, located at 4850 East 131<sup>st</sup> Street.

**Docket No. 04060002 SUA** Chapter 5.02.A special use

**Docket No. 04060003 V** Chapter 5.04.03.F lot coverage

The site is zoned S-1/Residence – Low Density.

Filed by Larry Kemper of Nelson & Frankenberger.

The Public Hearing of this petition was left open at the last BZA meeting, July 26, 2004.

Present for the Petitioner: Larry Kemper, 3105 E 98th St, Suite 170, Indianapolis. Present on behalf of the church were Pastor Luther Brunette and Shirley Bain. Also present were Jamie Shinneman and Shaun Ryan from Weihe Engineers and Mike Engledow of Schmidt Associates Architects. Several neighbors raised issues at last month's meeting regarding the Church's proposal. The primary issues relate to landscaping along the northern and eastern boundaries of the real estate and the effect this proposal would have on off-site drainage. Since the last meeting, the church has investigated the possibility of converting the dry detention basin which exists in the southeast corner of the real estate to a wet retention pond. This would increase the volume of the retention capacity of that retention area and lessen the dispersion rate on the adjacent properties. This would also enhance the aesthetics of the retention area. The church has agreed to make these changes, as submitted in the supplemental packet. By adding the wet retention pond, the retention volume will be increased and the dispersion rate off-site will be reduced from 5.20 cubic feet per second to 1.17 cubic feet per second. The church has also agreed to install a fountain in the pond which will make it similar in appearance to the fountain which currently exists at Christ Community Church which is located at the northwest corner of the intersection. This information was conveyed to the neighbors at a meeting which was held on August 5<sup>th</sup>. Although they legally are required to notify only adjoining and abutting neighbors, this time all neighbors within an eighth of a mile were notified of the August 5<sup>th</sup> meeting. Approximately 150 notices went out and approximately 30 neighbors attended the meeting. The church and the neighbors favor removing all the Scotch pines located on the north and eastern boundary line of the real estate and replacing them with a new landscape berm and landscaping. The Urban Forester favored partially removing the Scotch pines. The church hired an arborist, Judd Scott from Vine & Branch, to inspect the trees individually. His conclusion was that the best long term solution was to remove all the Scotch pines and replace them with a landscape berm and a hardier evergreen. His report was forwarded to the Urban Forester. Mr. Kemper distributed copies to the Board.

Mr. Shinneman, 10505 N College Avenue, Indianapolis, discussed the impact of the wet retention pond. This will increase the volume and slow the flow of water. The existing runoff to the east will be deterred by the new berm and redirected to the new pond. The flow rate of 1.17 will be one quarter of the existing rate of 5.20 cubic feet per second. After research with the Carmel Engineering Department and a field investigation, it was determined the water flows north into the Brookshire Lakes subdivision area as was intended from the 1997 TAC notes and does not flow south into the Mohawk Crossing subdivision.

Rev. Brunette, Senior Pastor at Carmel Lutheran, thanked the Board for their services. He discussed the mission of the Church and listed their various mission endeavors and activities within the community. They wish to stay in Carmel and have a dynamic ministry and to be good neighbors by compromising.

Mr. Weinkauff stated that since this is a continuation of the last meeting, the public was given the opportunity to speak in favor of this petition. Tonight would continue with the remonstrators who still have concerns.

**Remonstrators:**

Hal Walters, 4950 Tudor Place, Brookshire Lakes subdivision, on the lower lake. No one is in opposition to the church expanding. The problem has been the lack of responsiveness in the past. He shared pictures of the last expansion in 1998, which they were told would be the last expansion. When there was a heavy rain during construction, the Brookshire Lakes pond was silted in. He is concerned

that the proposal is final and that they know exactly what the parameters are. In looking at the engineering studies from Weihe, he sees a lot more numbers than 1.17. May 21, 2004 entry on the introduction of analysis storm water management area was read regarding the discharge rate. He thought it was confusing with four proposals with four different orifices and he didn't know which one was proposed to the City. He was looking for assurances and a commitment to do the right thing. It looks like parking lot water will be retained by the parking lot berms and flow north along the drive and then back south and out of the driveway onto 131<sup>st</sup> Street and then back into Brookshire Lakes and into the ponds. He questioned the elevations of the retention pond. He is suspicious because no one would act when they had this problem in 1998. The estimate to clear their pond is \$50,000.00.

Mr. Weinkauff asked Mr. Walters if he felt the silting in of the pond in Brookshire Lakes is, in his opinion, a direct result of the runoff from Carmel Lutheran Church alone or perhaps it is also a part of runoff from other areas.

Mr. Walters stated that, in his opinion, the silting of the pond was only from the runoff water from Carmel Lutheran Church. The outlet for the dry detention pond is in the southeast corner of the detention pond. It runs through a culvert underneath the sidewalk, runs east, downhill in a roadside ditch for approximately 100-150 feet and then into a culvert underneath the properties directly to the lake. The only water that gets into that culvert comes off Carmel Lutheran Church property. They watched the mud roll off the church's proposed parking lot, into their culvert, through the City's ditch, into the culvert to the pond and into the pond.

Rebuttal:

Mr. Kemper stated that in 1997/1998 at the last expansion, the contractor failed to install silt barriers. They will make sure that does not occur this time.

Mr. Shinneman stated that the May 21, 2004 report numbers were taken from a report by Schmidt. Weihe Engineering was not able to come up with the same numbers through a model simulation, therefore the discrepancies. In the construction plans that were submitted to Carmel Engineering, it states they will be using a six inch orifice. The water draining on the site will be collected in inlets on the parking lot and go under the entrance into the pond. The entrance driveway has natural low points which will prevent the water from running onto 131<sup>st</sup> Street. All the water will remain on the property. The higher elevation on one side of the retention pond will force the water to back up onto the parking lot, in case of an emergency. They will put up silt fences everywhere, catch basins to help catch water and catch basin traps to help catch sediments to prevent what happened last time.

Mr. Kemper stated that they were not trying to hide anything and he understood Mr. Walters was not available for the neighborhood meeting, so they could not explain everything to him.

Remonstrators:

Glenn Keller, 4809 Essex Court, north of the church. The church has been good neighbors and they are not against them expanding. He shared pictures from his property to the church with a dead tree on the boundary. He is concerned about materials being used in the construction of the two-story addition. He would like to see the landscaping kept up in the future.

Jim McFadden, 20-year Brookshire Lakes resident. He suggested a berm along 131<sup>st</sup> Street to stop water from flowing into the culvert south of the area. He also suggested raising the driveway slightly so that the water would flow to the right into the retention pond and not onto 131<sup>st</sup> Street.

Rebuttal:

Mr. Kemper stated that raising the berm along 131<sup>st</sup> Street would affect the drainage to the culvert.

Mike Engledow with Schmidt Associates. He discussed the building elevations. They will match the stone and be an extension of the existing building.

Ms. Butler gave the Department Report. The Petitioner has gone through great efforts to become a good neighbor to the adjoiners and the Department recommends positive consideration of these dockets.

Discussion followed regarding the landscaping plan and the drain construction in 1998. The landscaping plan is Option A. All the Scotch pine trees will be removed and new berm and evergreens will be installed. Efforts are to be made to prevent the same drainage construction problems that occurred in 1998.

The Public Hearing was closed.

Mr. Dierckman moved to approve **Docket No. 0406002 SUA, Carmel Lutheran Missouri Synod Church – Expansion**. The motion was seconded by Mr. Hawkins and **APPROVED 5-0**.

Mr. Dierckman moved to approve with conditions **Docket No. 0406003 V, Carmel Lutheran Missouri Synod Church – Expansion**. The Conditions are 1) That prior to groundbreaking, silt prevention screens be installed and then maintained during construction; 2) That the Urban Forester be involved in the landscaping plan. The motion was seconded by Mr. Hawkins and **APPROVED 5-0**.

**3-11h. TABLED: ~~West Carmel Marketplace (former Walnut Creek)~~**

~~The applicant proposes a retail shopping center and seeks the following Development Standards Variances:~~

~~**Docket No. 04050029 V** Chapter 23C.10.02.2 — rear foundation plantings Primary Bldg~~

~~**Docket No. 04050030 V** Chapter 23C.13 — access to tracts~~

~~**Docket No. 04050033 V** Chapter 25.07.02-11.b — sign number & type~~

~~**Docket No. 04050034 V** Chapter 25.07.02-11.c — wall sign area Primary Bldg~~

~~**Docket No. 04050035 V** Chapter 25.07.02-11.c — ground sign area~~

~~**Docket No. 04050036 V** Chapter 25.07.02-11.d.i — ground sign height Primary Bldg~~

~~**Docket No. 04070008 V** Chapter 25.07.02-11(g) — extra changeable copy area~~

~~**Docket No. 04070009 V** Chapter 23C.09.D — facade projections/recessions~~

~~**Docket No. 04070010 V** Chapter 23C.09.D — facade material change: horizontal-vertical~~

~~The site is located northeast of 99th Street and Michigan Rd/US 421. The site is zoned B-3/Business and B-2/Business within the US Highway 421 Overlay.~~

~~Filed by Mary Solada of Bingham McHale for Duke Realty.~~

**12h. Fidelity Plaza, Tower 3 - Fifth Third Bank Sign**

The applicant seeks the following development standards variance:

**Docket No. 04070017 V** Chapter 25.7.02-11(b) number of signs

The site is located at 11590 N Meridian Street.

The site is zoned S-2/Residence & B-6/Business within the US 31 Overlay.

Filed by Tom Engle of Barnes & Thornburg for REI Investments.

Mr. Hawkins recused himself from this petition due to a conflict of interest.

Present for the Petitioner: Scott Bordenet, Benchmark Land Services, 9855 Crosspoint Blvd, Suite 110, Indianapolis. Also present was Tom Engle of Barnes and Thornburg. Pictures of the building were distributed. Currently there is a sign on the southeast façade. They are proposing to raise the number of signs to two. This project has already been through ADLS review. Fifth Third has changed their standard color and format of the sign to better integrate with signage on the surrounding buildings. Without this variance, Fifth Third would not have the visibility that competitive businesses have on the surrounding buildings.

Tom Engle, Barnes & Thornburg, 11 S. Meridian, Indianapolis. He pointed out that Fifth Third found this facility to use rather than build a free-standing bank building.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

Ms. Butler gave the Department Report. The Department recommends positive consideration of this docket.

Mr. Dierckman asked about previous signs at this location.

Mr. Bordenet stated that there is currently one sign on the building and they would like to add an additional sign. No sign will be taken down.

Discussion followed regarding the Carmel Sign Ordinance. Mr. Weinkauff felt there had been inconsistencies in the Department's recommendation with previous signs.

Ms. Butler stated that there are multiple buildings within this complex. With this unique location along U S 31 and 116<sup>th</sup> Street, there are adjacent buildings within the complex that have one or two signs so they are more easily viewed from the highway. The other sign on this building is for a different business. Fifth Third Bank would only be getting one sign for their business.

Mrs. Plavchak wanted to know if Fifth Third Bank would be occupying the whole building.

Mr. Bordenet stated that Fifth Third Bank will occupy part of the first floor, including the drive-thru.

Ms. Butler stated that ground signs with directories are used within complexes of business buildings.

Mr. Molitor stated that the practice has been that the landlord has control of the wall sign. If the building has two faces, then it is allowed a sign to face each street. This building only faces 116<sup>th</sup>

Street, but staggers back behind the other building facing 116<sup>th</sup> Street. There is a ground sign at the entrance to the complex.

Mr. Bordenet stated that there would be ground signs indicating the direction to the drive-thru.

The Public Hearing was closed.

Mr. Dierckman moved to approve **Docket No. 04070017 V, Fidelity Plaza, Tower 3 – Fifth Third Bank Sign**. The motion was seconded by Mrs. Torres. The vote was tied 2-2, with Mr. Dierckman and Mrs. Plavchak casting the opposing votes.

Mr. Dobosiewicz stated that the item would be tabled until the next regular Board of Zoning Appeals meeting on September 27, 2004. In the meantime, the City Council would need to appoint an alternate Board member, in place of Mr. Hawkins, to hear this item.

**13h. Carmel Science & Tech Park, Blk 14, lot 1- Options Charter School**

The applicant seeks use variance approval for a charter school.

**Docket No. 04070019 UV** Chapter 20D.01 permitted uses

The site is located at 530 West Carmel Drive and is zoned M-3/Manufacturing Park District. Filed by Scott Wyatt of Campbell Kyle Proffitt for Central Indiana Options in Education.

Present for the Petitioner: Scott Wyatt, 11595 N. Meridian, Carmel. Also present were the Directors of the School, Kevin Davis and Barb Maschino, Ken Keltner, the property owner, several Options Charter School board members and the architect. The school wants to relocate to this larger facility. Mr. Keltner will install an elevator in this two story building to meet the American Disabilities Act. If parking becomes a problem, they will shuttle students in from another location. The sign will be located above one of the doors that will be consistent with what was approved for this building. This move will improve the educational opportunities for the students. They will have a larger recreation area, larger classrooms and a student lounge.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

Ms. Butler gave the Department Report. The Department amended its recommendation to strike out the condition that the Petitioner installs a walk along Carmel Drive. This is due to the fact that it is a separate issue that they will deal with through the Engineering Department. The Department recommends positive consideration.

Mr. Wyatt stated that the current enrollment is 130 students and that is the maximum within the school commitments. The new facility will provide a larger recreational area that did not exist at the old facility.

Kevin Davis, Director of the Options Charter School, 150 Union Court, Carmel. The school serves students in grades 9-12. These students are often unsuccessful in the traditional classrooms. The school is recognized as an alternative school by the State of Indiana. The juniors and seniors spend as much as half the time off-site for community service projects, job shadowing and internships. This location has

a much better opportunity for outside activities. There is a nice paved parking area in back of the school that can be used for cookouts, tables for outside eating, etc.

Parking was discussed. There are thirty-five parking stickers issued to students. The others carpool so as not to ride the bus from the off-site parking.

The Public Hearing was closed.

Mr. Dierckman moved to approve **Docket No. 04070019 UV, Carmel Science & Tech Park, Blk 14, lot 1 – Options Charter School**. The motion was seconded by Mrs. Plavchak and **APPROVED 5-0**.

**14h. TABLED: ~~Martin Marietta, Appeal to Director's Determination of~~**

~~The applicant would like to appeal a Director determination that Martin Marietta's operation is a legal, nonconforming use:~~

~~**Docket No. 04070020 A** Chapter 28.06 Existence of a Nonconforming Use~~

~~The site is located north of 106<sup>th</sup> Street and west of Hazel Dell Parkway. The site is zoned S-1/Residence Low Intensity. Filed by Tom Yedlick.~~

**I. Old Business:**

There was no Old Business.

**J. New Business:**

There was no New Business.

**K. Adjourn.**

Mr. Dierckman moved to adjourn. The motion was seconded by Mrs. Plavchak and **APPROVED 5-0**.

The meeting was adjourned at 8:45 PM.

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Charles Weinkauff, President

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Connie Tingley, Secretary

An Executive Session followed immediately after the regular meeting to discuss pending litigation.